



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3696 OF 2021

M/s Kamal Pulses, C. A. Road, Nagpur and ors.

-VS-

Punjab National Bank, Thr. Manager, Gandhibagh, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. V. Samarth, Senior Advocate with Shri P. A. Jibhkate, Advocate for petitioners.

Shri Shantanu. G. Deshpande, Advocate for respondent/Bank.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : December 11, 2023

P. C.

1. Heard.

2. The respondent-Bank as against the default committed by the petitioners in repayment of loan amount initiated proceedings before the Debt Recovery Tribunal, Nagpur (DRT) vide Original Application No.150/2014. The said Original Application appears to have been not properly contested by the petitioners which has resulted in passing of the order dated 28/11/2017 whereby the petitioners were held liable to pay Rs.2,91,35,072/-. The Debt Recovery Tribunal further granted declaration that the aforesaid outstanding amount is secured by the property mortgaged by the petitioners described in schedule annexed to the application. Period of sixty days was granted to repay the outstanding dues and accordingly a charge was created on the aforesaid mortgaged property .

2. It appears that the petitioners though granted an opportunity to pay the outstanding dues and honour the order of the DRT, have chosen to prefer an appeal before the Debts Recovery Appellate Tribunal, Mumbai vide Appeal (L) No.574/2019 along with I.A. No.362/2019 for

condonation of delay. The said application for condonation of delay came to be rejected vide order dated 18/03/2021 as such the present writ petition.

3. We are informed that the attached property of the petitioners was already auctioned and an amount of Rs.1,65,00,000/- and odd was recovered.

4. Considering the nature of prayers and the reasons cited we confronted the learned counsel for the respondent-Bank as to whether the respondent is willing to consider the case of the petitioners. On instructions, the learned counsel informed that as on date, Rs.2 Cr and odd are outstanding.

5. In this backdrop we asked the learned counsel for the petitioners if he can make a statement whether the petitioners are willing to deposit the outstanding amount so as to consider their request for directions to hear their appeal on merits.

As against above, Shri M. V. Samarth, learned Senior Advocate has placed on record additional affidavit of the petitioners stating that today's financial condition of the petitioners does not permit them to make any deposit or give assurance to the Court of such deposit particularly having regard to financial hardship faced by them.

6. According to him this Court needs to consider the fact that the loan account of the petitioners with the respondent-Bank was operational since 1994 and it is only after the petitioners suffered loss of around Rs.150 Cr in an accident, their financial condition deteriorated. Shri M. V. Samarth, learned Senior Advocate would urge that the bonafides of the petitioners need to be considered.

7. We have appreciated the aforesaid submissions. The fact remains that the mortgaged property of the petitioners is already sold and partial amount is already recovered from them. The learned Senior Counsel has made a categorical statement that the petitioners are not in a position to deposit any of the amount which is outstanding against them.

8. In view of aforesaid, we are unable to weigh the equity in favour of the petitioners so as to grant relief of condonation of delay as has been prayed. The fact remains that the respondent-Bank is a financial institution who is holding public money in trust. As such unfounded reasons in support of prayer for condonation of delay prejudicial to the interest of the respondent cannot be accepted particularly having regard to the aims and objects of the statute under which the recovery proceedings are initiated. The ground in support of prayer for condonation of delay i.e. ill health of one of the petitioners is without any basis and non convincing. The petition lacks merits. The same stands dismissed. No costs.

Pending Civil Applications also stand disposed of accordingly.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)